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**REPLY TO:**

FLEMINGTON OFFICE

February 12, 2018

The Honorable Judge Michael A. Hammer  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street Room 4015  
Newark, NJ 07101

**Re: Malibu Media, LLC v. John Doe Subscriber Assigned IP Address 108.35.202.146;**  
**District of New Jersey; Case No. 2:15-cv-04224-MCA-MAH**

Dear Judge Hammer:

Plaintiff, Malibu Media, LLC ("Plaintiff"), by and through undersigned counsel hereby submits the instant letter.

On February 6, 2018, Your Honor entered a Text Order [CM/ECF 40] requiring that the Plaintiff inform the court whether or not it intends to pursue this instant matter.

Plaintiff believes it has a legitimate case against Defendant for copyright infringement and for spoliation of evidence related to the copyright infringement. Defendant's hard drive, recently examined by Plaintiff's expert, is inconsistent with evidence from Plaintiff's expert in that the hard drive that was provided was blank. Based on experience, this blank hard drive signals to Plaintiff that Defendant has additional hard drives, and electronic device used for infringing downloads.

Even with this evidence coupled with additional evidence against Defendant, Plaintiff is willing to dismiss the matter in order to save on the additional costs of litigating this case, with each party to pay his own fees and costs. However, Defendant continues to press for Plaintiff to pay his/her fees and costs as a result of any dismissal.

At this juncture the parties are at a stalemate. Plaintiff believes it may be in the best interest of the parties for the Court to schedule a telephonic settlement conference.

Otherwise, considering Defendant's position on fees and costs as a result of any dismissal, Plaintiff is prepared to continue its case against Defendant for copyright infringement and spoliation of evidence. In order to proceed, Plaintiff would need additional discovery including but not limited to deposition of Defendant, and subpoenas to Defendant's bank(s),

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credit card(s), and other online payment providers, for information regarding Defendant's purchase of additional hard drives, and other devices capable of downloading and storage of downloaded information.

In light of the foregoing, Plaintiff respectfully requests that this Court set a telephonic settlement conference, and/or extend trial and pretrial deadlines to allow Plaintiff to continue to pursue the instant matter.

Dated: February 12, 2018

Respectfully submitted,

By: /s/ Patrick J. Cerillo  
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